In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 870

STANLEY TAYLOR and EVELYN FLYNN,
Petitioners,

vs.

PAUL A. PORTER, Administrator, Office of Price Administration,
Respondent.

Reply Brief for Petitioners

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

PRELIMINARY STATEMENT

Respondent concedes that a final order, entered in civil contempt proceedings after judgment in the main cause has become final, is an appealable order (Br. p. 4).

Respondent contends, however, that the order in the instant case is not final. This contention is not supported by the facts or by the cases cited by Respondent, and we believe it to be clearly erroneous and contrary to the authorities cited in our Petition.

I.

REPLY TO POINTS RAISED IN OPPOSITION

In the case entitled *In re Eskay,* 122 F.(2d) 819 (C.C.A. 3rd), one of the two cases cited by respondent in opposition, we find no relevancy to the instant case.

In re Eskay, supra, holds that a *criminal contempt* in which no sentence has been passed is not final for purposes of appeal. With this conclusion we agree, but it has no bearing on the instant case. The instant case involves a *civil contempt order,* not a criminal contempt (R. II, p. 152).

Nor does the cited case contain any reference to *remedial action* in the manner set forth by respondent (Br. p. 5), the reference in question refers only to *punishment* (122 F.(2d) 819 at 824).

II.

An examination of *International Silver Co. v. Oneida Community,* 93 F.(2d) 437, reveals that the order in that case was in fact as well as in law not a final order and the difference between the order in that case and the order in the instant case merely serves to emphasize the finality, for purposes of appeal, of the order in the instant case.

The full quotation from the cited case of which respondent gave only a part, reads as follows:

> "It did no more than to interpret the prior injunction *and to direct proceedings by way of a reference which might ultimately result in some direction to pay damages.*" (93 F.(2d) 437 at 441).

In the instant case the order appealed from specifically ordered petitioners to refund considerable sums of money to tenants (R. II, pp. 15-20, at p. 20). There is no lack of finality in the order of the court in this respect. *Berman v. U. S.*, 302 U.S. 211, cited in our Petition (p. 9).

III.

Much has been said concerning the fact that the district judge reserved the power to commit petitioners to jail if they failed or refused to comply with the substantive terms of the order. Obviously, this reservation of power to enforce the order does not in any way detract from the finality of the substantive provisions of the order. Petitioners do not appeal from that portion of the order which reserves power to enforce the order. Their appeal was directed against the substantive provisions of the order, which directed the refund of money and prohibited the collection of sums of money which were due under the contracts with the tenants and purchasers of furniture (R. II, pp. 133-136).

The fact that an assessment of costs in the amount of $500.00, was made and later remitted (R. II, pp. 20, 150), does not enter into the case so far as the appeal is concerned. No question concerning the assessment of costs has been raised on appeal. It is obvious that the references made to this assessment and the references made to the power reserved to enforce the order, have only served to confuse and becloud the real issues in the case (see Brief for Respondent, pp. 5-6).

It would appear from the Argument of respondent (Br. for Respondent, p. 5), that it is respondent's con-

tention that the reservation of power to enforce the order by committing petitioners to jail in and of itself prevents an appeal from the substantive portions of the order unless and until petitioners, by refusing to obey the order, are actually ordered or committed to jail. This is a contention not supported by the authority cited, and one with which we are sure this Honorable Court will not agree. Under this theory of law an appeal in a civil contempt case could be deterred or made most perilous by the judge issuing the original civil contempt order. Is it not apparent that if to obtain a review of a civil contempt order the contemnor must deliberately refuse to obey said order and be committed to jail, that what commenced as a civil contempt would most likely end as a criminal contempt of a most serious nature?

CONCLUSION

In actuality, respondent seeks to sustain the decision of the court below on a theory of law which was not advanced by the circuit court in its own opinion, and we have shown respondent's theory to be erroneous and not supported by the cases cited.

As set forth in our Petition (p. 3) the circuit court based its ruling upon the proposition that:

> "A remedial or civil contempt order directed against a party litigant is deemed interlocutory and not a final order, and is reviewable only on appeal from the final decree in the main action. * * * The judgment of contempt was remedial, therefore civil and interlocutory, and not final for the purposes of appeal to this court." (Tr. Vol. II, pp. 151-152.)

Respondent has not attempted to support this proposition of law, supra, and in fact it would appear that respondent has in effect admitted the above to be erroneous in his concession on page 4 and his note (2) at bottom of page 5, of the Brief in Opposition. In any event respondent has failed to answer the facts, argument and cases cited by petitioners, which show the decision below to be erroneous and in conflict with applicable decisions.

Wherefore, it is respectfully submitted that the writ should be granted.

April, 1946.

STANLEY W. TAYLOR,
1201 Fulton Street,
San Francisco 17, Calif.,
Petitioner in Propria Persona.

EVELYN FLYNN,
530 Larkin Street,
San Francisco, Calif.,
Petitioner in Propria Persona.